STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Beckering, P.J., and Borello and M.J. Kelly, JJ.)

HELEN YONO

Plaintiff/Appellee,

v

MICHIGAN DEPARTMENT
OF TRANSPORTATION,

Defendant/Appellant.

Supreme Court No. 150364

Court of Appeals No. 308968

**AMICUS CURIAE BRIEF ON BEHALF OF
THE MICHIGAN ASSOCIATION FOR JUSTICE (MAJ)
AND IN SUPPORT OF PLAINTIFF/APPELLEE YONO**

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INTEREST OF AMICUS CURIAE

Amicus Curiae, Michigan Association for Justice (MAJ), is an organization of Michigan lawyers engaged primarily in litigation and trial work. Comprised of more than 1,500 attorneys, MAJ recognizes an obligation to assist this Court on important issues of law that substantially affect the orderly administration of justice in the State of Michigan.

This case presents important issues of law concerning the government's duty to maintain Michigan's public roads in a reasonably safe condition under MCL 691.1402(1), as well as the corresponding obligation under that section to compensate those persons injured or damaged when the government fails to maintain safe public roads in Michigan.

Specifically, this case concerns whether the phrase, "improved portion of the highway designed for vehicular travel", as used in MCL 691.1402(1), includes "improved" sections of Michigan's public roads beyond what MDOT considers the "travel lanes". Even more precisely, it addresses whether an improved section of public road in Michigan is "designed for vehicular travel", when it is also designated so as to permit parallel parking.

This case may clarify the extent to which Michigan's public roads must be maintained in a "reasonably safe condition". In particular, it may resolve the question of whether the government must maintain improved sections of Michigan's public roads beyond the so-called "travel lanes" or "thoroughfare" lanes, including not only parallel parking areas, but also, bicycling lanes, turn lanes, and acceleration/deceleration lanes.

As such, this case may have a direct and substantial impact on MAJ members' clients who are injured or damaged while using Michigan's public roads and must seek compensation from the government for losses caused by unsafe public roads in Michigan.

QUESTION PRESENTED

In granting leave to appeal in this case, this Court asked the parties to address "whether a vehicle engages in 'travel' under MCL 691.1402(1) when it parks in, including pulls into and out of, a lane of a highway designated for parking". Presumably, the Court is asking not whether vehicles literally "travel" when pulling in and out of parallel parking, but instead, whether, legally, under MCL 691.1402(1), vehicular travel in a parallel parking area is more akin to vehicular travel on the road's shoulder than using the "travel lanes". Effectively, the Court is asking whether this case is more similar to *Nawrocki v Macomb Co Road Comm'n*, 463 Mich 143; 615 NW2d 702 (2000), or *Grimes v Mich Dep't of Transp,* 475 Mich 72; 715 NW2d 275 (2006). Viewed in that context, the question here is simply **"[w]hether an "improved portion of highway" is "designed for vehicular travel", even though it has been designated as an area where parallel parking is also permitted?** Amicus curiae MAJ answers "Yes" to that question. Plaintiff/Appellee, Helen Yono, would also answer "Yes", as would the Court of Appeals. Defendant/Appellant MDOT says "No".

This Court has also asked the parties to address whether the evidence presented on summary disposition was sufficient to warrant a legal ruling on whether the parallel parking area in this case was "designed for vehicular travel" under MCL 691.1402(1). Amicus curiae MAJ takes no position on the sufficiency of the evidence presented by the parties on summary disposition under MCR 2.116(C)(7). Similarly, MAJ does not view this case as the proper vehicle to determine whether questions of fact on a motion for summary disposition involving governmental immunity under MCR 2.116(C)(7) must be resolved by the trial court at a hearing or submitted to a jury, because there is no right to a jury trial in cases against the State of Michigan under the Court of Claims Act, MCL 600.6431, et seq.

STATEMENT OF FACTS

Amicus Curiae, Michigan Association for Justice (MAJ), adopts the statement of facts in Plaintiff-Appellee's Brief on Appeal and the Court of Appeals' opinion in Yono II.

STANDARD OF REVIEW

The standard of review is de novo for questions of statutory interpretation. See *Duffy v Mich Dep't of Natural Resources*, 490 Mich 198, 204; 805 NW2d 399 (2011).

ARGUMENT

I. UNLIKE SHOULDERS, IMPROVED SECTIONS OF MICHIGAN'S PUBLIC ROAD DESIGNATED AS PARALLEL PARKING ARE "DESIGNED FOR VEHICULAR TRAVEL" AND THEREFORE, MUST BE MAINTAINED UNDER MCL 691.1402(1).

In Michigan, as in other jurisdictions, the shoulder of a public road is demarcated by a solid white line, sometimes called a "fog" line. Its presence informs motorists and others lawfully using the public roads, where the "travel" or "thoroughfare" lane ends. In the fog, that line also can be used to ensure that one is not traveling on the shoulder of the road.

Not all public roads, however, use pavement markings to designate the shoulder of the road; some public roads are built curb-to-curb and there is no shoulder, as in this case. On such roads, there may be no pavement markings designating where the "travel" or "thoroughfare" lanes end. Presumably, the presence of a concrete curb is warning enough.

Where, as in this case, the construction of the actual roadbed is uniform, curb-to-curb, drawing a few white lines on the road does not transform areas outside those lines

into the equivalent of the shoulder of a public road. Without room for vehicles to make emergency stops, there is effectively no shoulder on such public roads in Michigan. Thus, the actual roadbed must be maintained from curb-to-curb under MCL 691.1402(1).

In *Grimes*, supra, the shoulder of the road was demarcated by a solid white line on I-75 northbound. As such, the "travel" or "thoroughfare" lane ended at the solid white line. Here, there is nothing demarcating where the "travel" or "thoroughfare" lane ends. Yet, MDOT contended, in moving for summary disposition, that the "travel" lane ended 11 feet from the centerline, and thus, according to MDOT, the pavement defect in this case, which was located at or near the curb, was outside the "travel" or "thoroughfare" lane on M-22. By implication, a pavement defect found 12 feet from the centerline on M-22 would also be outside the "travel" or "thoroughfare" lane, according to MDOT, and thus, also not within the improved portion of the road "designed for vehicular travel" under MCL 691.1402(1).

Respectfully, MDOT's position in this case is truly disturbing. If correct, all who travel on M-22 in Suttons Bay can be exposed to dangerous defects in the actual roadbed, without any recourse under MCL 691.1402(1), because there is simply no way for motorists (or others) to know exactly where the protection of the "travel" or "thoroughfare" lane ends. Unlike *Grimes*, where the white fog line of the shoulder informed motorists not to stray from "the improved portion of the highway designed for vehicular travel", MDOT contends here that those using Michigan's public roads should simply know where the travel lane ends.

Recognizing the implausibility of requiring motorists and others using the public roads in Michigan to simply know where the "travel" lane ends, MDOT has now focused its argument on establishing that the pavement defect in this particular case was not within the improved portion of the road "designed for vehicular travel". Now, on its second appeal

to this Court, MDOT adopts the argument that white lines painted on the road to designate parallel parking are sufficient visual cues that the "travel" or "thoroughfare" lane has ended.

Unlike a solid white line, however, perpendicular lines running from the curb towards the centerline do not clearly demarcate where parallel parking ends vis a vis the travel lane. Here, no rectangular boxes mark the precise area being used for vehicles parallel parking. Instead, the edge closest to the centerline of M-22 is left unmarked, thus requiring that an imaginary line be drawn connecting the white line from one parking space to the next consecutive white line in order to determine where the parallel parking presumably ends. Clearly, the situation on the road is not the same here as it was in the *Grimes* case. Absent a solid white line on the road, there is no way to know where the travel lane ends.

By leaving open the rectangular space used for parallel parking on M-22, and not closing the box, so to speak, using the parallel parking area for travel remained an option. In fact, MCL 257.660a expressly permits overtaking and passing on the right in such situations. So, if traffic is stopped, one can pass on the right, except where it is specifically prohibited. Presumably, motorists using the parallel parking area for travel on M-22 did not concern MDOT (until now) or it would have marked the travel lane with solid white lines.

Here, MDOT makes no claim that motorists are not authorized to use the areas designated as parallel parking on M-22 to pass stopped vehicles in the center lane. As was demonstrated below on summary disposition, vehicles routinely travel in the areas designated for parallel parking on M-22 in Suttons Bay, as permitted, and as contemplated. Moreover, such vehicle use, unlike with shoulders, is not limited to emergency situations.

CONCLUSION

Clearly, the parallel parking lane where Ms. Yono was injured on a defect in the actual roadbed is more similar factually to the situation presented in *Nawrocki* than *Grimes.* While perpendicular lines on the road demonstrated to motorists that parallel parking was permitted along M-22, in Suttons Bay, those same lines did not in any way signal to motorists (and others lawfully traveling on M-22) that such travel was limited in the same way travel on the shoulder of a public road in Michigan is limited to emergency situations. Thus, the rationale adopted by this Court in *Grimes* clearly is not controlling in this case. This case may not be identical to *Nawrocki*, but it is more closely analogous than *Grimes*.

RELIEF REQUESTED

Amicus curiae MAJ asks this Court to affirm that parallel parking lanes are "designed for vehicular travel", and thus, must be maintained under MCL 691.1402(1) in "a condition reasonably safe and convenient" for all "public travel" including pedestrians.

Respectfully submitted,

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Dated: October 28, 2015

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